

DENNIS TURNIPSEED

IBLA 82-611

Decided July 29, 1982

Appeal from the decision of the New Mexico State Office of the Bureau of Land Management canceling its cooperative agreement with appellant for the private maintenance of four wild horses.

Affirmed.

1. Administrative Authority--Evidence: Generally-- Evidence: Sufficiency--Wild Free-Roaming Horses and Burros Act

A cooperative agreement for the private maintenance of livestock under the protection of the Wild Free-Roaming Horses and Burros Act may be summarily canceled by the Bureau of Land Management upon good and sufficient evidence that the terms of the agreement have been violated by depriving the animals of adequate food, water, and health care and/or by subjecting them to inhumane treatment. The deteriorating condition of the animals themselves, and credible reports by third parties of substandard care, constitutes such good and sufficient evidence, and the decision to cancel will be affirmed in the absence of a showing that persuasive countervailing evidence exists.

APPEARANCES: Jay D. Ransom, Esq., Atlanta, Texas, for appellant; John H. Harrington, Esq., Santa Fe, New Mexico, Department counsel.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On February 19, 1981, Dennis Turnipseed entered into a cooperative agreement with the New Mexico State Office of the Bureau of Land Management (BLM) for the private maintenance, protection, and welfare of four wild free-roaming horses pursuant to 16 U.S.C. § 1333 (1976; Supp. IV 1980) and 43 CFR 4740.3(a) (1980). 1/

1/ Now codified as 43 CFR 4740.4-2.

The four horses, individually identified by BLM freeze brands, were subsequently removed by Turnipseed to his property at Queen City, Cass County, Texas.

On February 5, 1982, James McConnell, Magistrate, issued a Writ of Attachment of Animals, ordering, inter alia, the sheriff or any constable of Cass County, Texas, to take immediate possession of said horses under authority of Texas statute, and to place the animals with some person, persons, or company that would provide emergency food, water, and shelter for them. The basis for issuance of the writ is stated in its first paragraph, as follows:

On this day, Ollie Jaynes, Constable of Precinct 3, Cass County, Texas, personally appeared before me and under oath testified that certain horses in the possession of Dennis Turnipseed and belonging to the United States Bureau of Land Management have been abandoned in an enclosure without necessary food, water or shelter in violation of Article 182, V.A.C.S., [2] such animals are in immediate danger of death;

The writ further ordered the officer taking possession of the horses to notify Robert Schultz, BLM, of their seizure, condition, location, and the name and address of the person having them in charge.

Constable Jaynes returned the writ with a notation that he had "Picked up the horses on the 2-6-82; 9:00 a.m." He then notified Schultz at BLM's New Mexico State Office. Schultz, in turn, asked BLM's Wild Horse and Burro Compliance Officer, John E. Whitley, to investigate. Meanwhile, the horses were placed in the custody of one Joe Luce.

Whitley journeyed to Cass County from New Mexico and viewed the horses on February 10, 1982. His report states:

When I saw the horses * * * they had been on free choice grass hay for 5 days. They were still very poor and in a neglected condition. Their feet had grown out very badly and needed trimming. I do not believe they had been re-wormed since the adoption. They had not grown at all since my compliance check nearly a year ago. [By contrast] the Luce and Hooker horses had done very well and were fat and had grown several inches.

Whitley's report included photographs of the horses and the substance of his interviews with Constable Jaynes, Joe Luce, and Mike Hooker. 3/ His report appended to the photographs is as follows:

2/ Vernon's Annotated Civil Statutes.

3/ Joe Luce and Mike Hooker assisted Jaynes in his seizure of the horses, and had observed their condition on previous occasions.

Although these pictures were taken in mid-winter when the horses hair was longest--their ribs are clearly visible.

With enlargement the neglected feet problems would be obvious.

The halter on the buckskin mare had not been taken off for a year and had started to grow into her head.

The horses had been on this good hay for 5 days before photographed.

The report notes that when Constable Jaynes made his investigation of the horses' condition at the Turnipseed place he decided that immediate action should be taken for the welfare of the horses. "Two (2) were very weak and Jaynes thought they might go down at any time. * * * Jaynes, Luce and Hooker all stated that the horses had eaten the bark off the sweet-gum trees on the Turnipseed place." It was also reported that Joe Luce had fed and watered the horses at the Turnipseed place while Turnipseed was in Colorado, feeding them his own (Luce's) hay "just to make sure they had something to eat," but that "Joe Luce and Mike Hooker felt they had given Turnipseed all the feed they could."

On February 19, 1982, BLM issued its decision canceling its cooperative agreement with Turnipseed on the basis of its finding that he had violated his commitment in Term 1 of the Agreement to furnish proper care and protection for the animals under humane conditions. The decision also stated that the horses had been reassigned to a new adoptor.

In his appeal from that decision, Turnipseed (appellant), acting by and through his legal counsel, presents a number of arguments. He maintains that the writ of attachment was improvidently issued because it cites article 189, V.A.C.S., as the authority for the constable to take possession of the horses, but states that article 189 was repealed in 1975, and that article 182a, V.A.C.S., prescribes the correct procedure to be followed in such cases. That procedure, he says, requires the court to set a hearing to determine the truth of the allegation that the animals have been cruelly treated. This was not done. Moreover, although the writ issued by Magistrate McConnell also ordered that Turnipseed be arrested and brought before the magistrate for appropriate action, this was not done either. Therefore, says appellant, he has at no time had an opportunity to confront the witnesses who made the allegations of cruel and inhumane treatment, or to present evidence to refute the allegations. Appellant also notes "that any reports of alleged abandonment and mistreatment of the horses were received more than a year after the date of the Cooperative Agreement, and the appellant would have already been entitled to his Certificate of Title to the animals."

Appellant asserts that "unfounded allegations cannot be used to deprive a citizen of substantive rights provided by law." He declares that the horses were kept in a fenced enclosure approximately 2 acres in area and that he resided on the same tract of land no more than 100 yards from where the

animals were kept. He further alleges that earlier in the same week that Constable Jaynes took the horses, appellant had sought medical attention for them by consulting with a veterinarian about having the horses wormed. He contends that at all times the horses had water and shelter available, and that they were fed regularly. He asserts that they were never in "immediate danger of death" as alleged by Constable Jaynes, and argues that Jaynes never attempted to have the horses examined or treated by a veterinarian either before or after they were seized.

Any alleged failure of procedure under Texas law is irrelevant to this appeal. ^{4/} We are concerned only with the propriety of BLM's action in canceling its cooperative agreement with appellant, and the reassignment of the horses to another.

The Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (1976; Supp. IV 1980), hereinafter "the Act," placed all animals affected by the Act under the respective jurisdictions of the Secretaries of Interior and Agriculture. The Act further authorized the Secretary of the Interior to remove excess animals and place them for private maintenance and care by qualified individuals who the Secretary determines "can assure humane treatment and care (including proper transportation, feeding, and handling)." 16 U.S.C. § 1333(b)(2)(B) (1976; Supp. IV 1980).

Although the Act authorizes the Secretary to transfer title to individual adoptors after one year, the adoptor has no unqualified vested right to be granted title to adopted animals. The Act conditions the Secretary's authority to grant such title upon his determination "that such individual has provided humane conditions, treatment and care for such animal or animals." 16 U.S.C. § 1333(c) (1976; Supp. IV 1980). The regulations provide that an "application for title shall include a written statement by a licensed veterinarian attesting to the best of his knowledge that the animals have been given humane treatment and care pending the filing of the application." 43 CFR 4740.4(b). Although a year had elapsed since appellant had taken custody of the horses, he had not applied for title, there had been no agency determination of humane treatment for the preceding year, and there is no allegation of the existence of a confirmatory written veterinarian's statement. Accordingly, the cancellation of the cooperative agreement for cause did not deprive appellant of any vested substantive right.

Moreover, 43 CFR 4740.4-2(e) provides: "If the authorized officer determines that an adopted wild free-roaming horse or burro is being commercially exploited, inhumanely treated, or treated in a manner that violates a provision of the cooperative agreement, he may take immediate possession of the animal."

^{4/} We note that the writ of attachment issued pursuant to article 182, V.A.C.S., as well as article 189. We note further that the writ provides in its final paragraph that, "The emergency found by the Court to exist precludes citation and hearing and requires that immediate action be taken for the welfare of the animals * * *."

Thus, if Whitley had independently found that these horses were being treated inhumanely or in a manner violative of the cooperative agreement, he would have been authorized by the regulation to personally take possession of them. The fact that, instead, the horses were removed from appellant's possession by local authorities does not alter the authority of the BLM official to thereafter deprive appellant of their possession. All that is required on the part of the BLM officer is that there be good and sufficient evidence that the animals were, in fact, treated inhumanely or in violation of the cooperative agreement. We are persuaded that Whitley's investigation produced ample evidence to support BLM's decision. Whitley had inspected the same animals a year before, and thus was enabled to note the absence of growth and weight increase. He personally observed the neglected condition of the animals' feet, the exposure of their ribs, the apparent lack of treatment for worms, and the halter growing into the head of the buckskin mare. He obtained additional information concerning their neglect from persons who had firsthand knowledge of it.

Appellant's allegations that the horses "were fed regularly," and that they had water and shelter available at all times, are simply insufficient to overcome the evidence of substandard care presented by the deteriorating condition of the animals themselves and by the credible reports of third parties. Under the circumstances, in the absence of a showing that persuasive countervailing evidence exists, we find it unnecessary to order a fact-finding hearing pursuant to 43 CFR 4.415.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

